

January 7, 2011

Ms. Carol Weston
City of Burlington
Department of Public Works
645 Pine Street
Burlington, VT 05401



125 College Street, 4th Floor
Burlington, Vermont 05401
802-860-1331
802-860-6499 fax
www.hoyletanner.com

RE: Cherry Street Intersection Project
City of Burlington, VT

Dear Ms. Weston,

Hoyle, Tanner & Associates, Inc. (Hoyle, Tanner) is pleased to submit the following scope and fee for Cherry Street Intersection Project. Hoyle, Tanner has reviewed documents provided by the City on the Cherry Street Intersection project and we have developed the following scope and fee for engineering services based on our site visit meeting and the documents.

PROJECT DESCRIPTION

The City of Burlington along with collaboration with the Church Street Marketplace would like to rehabilitate the Cherry and Church Street intersection. The project will consist of raising the grade of Cherry Street to the elevation of Church Street, install brick pavers within the intersection, develop the electrical upgrade within the Cherry Street intersection for the future Church Street Phase 3B project, install accommodations for a new Bollard system, and install detectable warning devices at the intersection.

GENERAL SCOPE OF SERVICES

Hoyle, Tanner will provide the following services for the above described project:

1. Field Documentation of Existing Conditions
2. Field Documentation of Existing Utilities
3. Conceptual Design
4. Preliminary Design
5. Permitting
6. Final Design
7. Contract Plans and Specifications
8. Assist City during Bid phase

ASSUMPTIONS

This Proposal is based on the following assumptions:

- Hoyle, Tanner's recommendations are solely based upon the information provided by City of Burlington.
- Hoyle, Tanner will review and evaluate the existing plans.

CLIENT RESPONSIBILITIES

Your responsibilities under this agreement shall include:

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- Provide all available information as to the project requirements.
- Provide all pertinent existing information including plans.
- Provide access to the site.
- Designate a contact person who can act with the client's authority regarding this project.

SCHEDULE

We propose to complete the services outlined in the Scope of Services in approximately three month from receipt of authorization to proceed.

BASIS OF PAYMENT

We propose to provide the services described in the GENERAL SCOPE OF SERVICES for a lump sum fee of thirty thousand dollars (\$30,000.00). You will be notified in advance if the scope of services changes to the extent that the fee needs to be adjusted.

Reimbursable expenses, such as transportation, meals, postage, telephone, fax transmissions and printing, are included in the compensation for professional services indicated above.

The attached *Standard Terms and Conditions* will apply and are made a part of this Proposal.

AUTHORIZATION

This Proposal and the Standard Terms and Conditions constitute the entire AGREEMENT between you the client, and Hoyle, Tanner. Two copies of this Proposal have been provided to you. Please examine these documents and if acceptable, you may execute this Proposal as an AGREEMENT by signing the original of this Proposal and returning it to us. Retain a copy for your records. This Proposal will be open for acceptance for one month from the date of this Proposal, unless extended by Hoyle, Tanner in writing.

This Proposal is a professional service prepared by Hoyle, Tanner for your consideration. Its contents shall not be reproduced, divulged, or transmitted to parties other than City of Burlington in any manner, in whole or in part, without the express written permission of Hoyle, Tanner.

We look forward to the opportunity to provide professional engineering services to you on this project. Please do not hesitate to call us if you have any questions or comments on this Proposal.

Very truly yours,
HOYLE, TANNER & ASSOCIATES, INC.



Charles H. Swanson, P.E.
Vice President

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IN DUPLICATE

For HOYLE, TANNER & ASSOCIATES, INC.:



(Charles Swanson, P.E., Vice President)



(Date)

For City of Burlington

PLEASE PROCEED WITH THE PROJECT AS INDICATED ABOVE.

(Name)

(Date)

(Title)

The CLIENT and HOYLE, TANNER & ASSOCIATES, INC. (HOYLE, TANNER) hereby agree as follows:

1. CONTRACT - The Contract is the Proposal, Agreement or Contract document that is signed and dated by HOYLE, TANNER and the CLIENT and to which these Standard Terms and Conditions are appended by reference. This contract takes precedence over any standard conditions the client may have in place.

2. COMPENSATION FOR SERVICES AND PAYMENT TERMS - The CLIENT agrees to pay HOYLE, TANNER in accordance with the payment terms provided in the Contract.

Fee - The total fee, except stated lump sum, shall be understood to be an estimate, based upon Scope of Services, and shall not be exceeded by more than ten percent, without written approval of the CLIENT. Where the fee arrangement is to be on an hourly basis, the rates shall be those that prevail at the time services are rendered.

Billings/Payments - Invoices will be submitted monthly or upon completion of a specified scope, whichever is shorter, for services and reimbursable expenses and are due when received. Invoices shall be considered PAST DUE if not paid within 30 days after the invoice date and HOYLE, TANNER may, without waiving any claim or right against CLIENT, and without liability whatsoever to the CLIENT, terminate the performance of the service. Retainers shall be required for certain projects or under certain conditions and shall be credited on the final invoice. A late payment fee will be charged at 1.5% (or the legal rate) per month on the unpaid balance. In the event any portion of an account remains unpaid 90 days after billing, the CLIENT shall pay cost of collection, including reasonable attorneys' fees and court costs.

Reimbursable Expenses - Reimbursable expenses are expenses incurred directly or indirectly in connection with the project such as, but not limited to, transportation, meals, lodging for travel, long distance telephone calls and facsimile transmissions, overnight deliveries, courier services, equipment rental, photographs and video supplies, testing and laboratory services, permit and other license fees, professional services sales taxes, and the cost of reproductions beyond those normally required for coordination and information purposes. These expenses will be billed at cost plus a service charge of ten (10) percent.

3. RIGHT OF ENTRY - The CLIENT agrees to furnish HOYLE, TANNER with the right-of-entry on the project site or represents and warrants, if the site is not owned by the CLIENT, that permission has been granted to make site reconnaissance, surveys, borings, and other exploration pursuant to the scope of services in the Contract.

HOYLE, TANNER will take reasonable precautions to minimize damage to the land from use of equipment but has not included in the fee the cost for restoration of damage that may result from HOYLE, TANNER's operations, unless specifically stated in the Contract.

4. UNDERGROUND STRUCTURES - Unless otherwise agreed, the CLIENT shall provide HOYLE, TANNER with locations of buried utilities and other underground structures in areas of subsurface exploration.

HOYLE, TANNER will take reasonable precautions to avoid damage to the buried utilities and other underground structures noted. If locations are not known, are inaccurate, or cannot be confirmed by the CLIENT, then there will be a degree of risk to the CLIENT associated with conducting the exploration. In the absence of confirmed underground structure locations, the CLIENT agrees to accept the risk of any damages and losses resulting from the exploration work.

5. DOCUMENTS - All reports, design drawings and specifications, field data and notes, laboratory test data, calculations, computer files, estimates, and other documents that HOYLE, TANNER prepares as instruments of service shall remain HOYLE, TANNER's property. The CLIENT agrees that HOYLE, TANNER's services are on behalf of and for the exclusive use of the CLIENT and that all reports and other documents furnished to the CLIENT or its agents shall be utilized solely for this project.

6. HAZARDOUS MATERIALS - The scope of services for this Contract does not include services relating to hazardous waste, oil, asbestos or other hazardous materials, as defined by federal, state and/or local laws or regulations. HOYLE, TANNER is not insured for services related to the identification, containment or removal of asbestos or hazardous waste including pollutants, nor will we assume any liability for damages or costs related to these materials. If such materials are discovered during HOYLE, TANNER's services, the CLIENT agrees to negotiate appropriate revisions to the scope of services, the budget estimate, and the terms and conditions of the Contract. When such hazardous materials are suspected, HOYLE, TANNER will have the option to stop services until a new agreement is reached. If a mutually satisfactory agreement cannot be reached between both parties, the Contract shall be terminated. The CLIENT agrees to pay HOYLE, TANNER for all services rendered, including any costs associated with termination. The ownership of and responsibility for all contaminated materials, hazardous materials, and hazardous substances generated, released, uncovered, transported, and/or collected during HOYLE, TANNER's services or the Contractor work tasks referred to herein will not be with HOYLE, TANNER.

7. CONSTRUCTION SERVICES - The CLIENT recognizes that retaining HOYLE, TANNER to perform construction phase engineering services such as the review of shop drawings and product submittals, and full-time construction observation services, is a normal and integral part of engineering services for the project, and that retaining HOYLE, TANNER for these services can provide for the CLIENT a greater degree of confidence that the completed work of the Contractor will conform generally to the Contract Documents, that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor, and to minimize problems during construction. The CLIENT also recognizes that no entity is as familiar with the Contract Documents and their intent as HOYLE, TANNER. Therefore, the CLIENT is urged to retain HOYLE, TANNER to provide construction phase engineering services.

If HOYLE, TANNER's construction observation services are included as part of the scope of services in the Contract, HOYLE, TANNER will provide personnel to observe construction to ascertain that it is being performed, in general, in accordance with the plans and specifications.

7. CONSTRUCTION SERVICES (Continued)

It is understood that, in accordance with generally accepted construction practices, the contractor and any subcontractors will be solely and completely responsible for all construction activities, working conditions on the job site, including safety of all persons and property during the performance of the work, compliance with OSHA regulations, and quality of the work. Any monitoring of the contractor's performance conducted by HOYLE, TANNER personnel is not intended to include review of the adequacy of the contractor's safety measures in, on, or near the construction site.

It is further understood that field services provided by HOYLE, TANNER personnel will not relieve the contractor and any subcontractors of responsibilities for performing the work in accordance with applicable laws and regulations and in accordance with the Contract Documents.

Should the CLIENT not execute an agreement with HOYLE, TANNER to provide construction phase engineering services, then the CLIENT agrees to indemnify and hold HOYLE, TANNER harmless against any claims, liability and responsibility for construction problems or problems arising after construction is complete attributed to construction and the Contractor's performance, and failure of the contractor to follow the design intent and construct the project in accordance with the Contract Documents.

8. STANDARD OF CARE - HOYLE, TANNER's services will be performed in accordance with generally accepted practices of professional engineers providing similar services at the same time, in the same locale, and under like circumstances. The CLIENT agrees that services provided will be rendered without any other warranty, expressed or implied.

9. INSURANCES - HOYLE, TANNER maintains Worker's Compensation Insurance and Comprehensive General Liability Insurance including Personal Injury and Property Damage coverage. HOYLE, TANNER will furnish certification upon written request. The CLIENT agrees that HOYLE, TANNER will not be liable or responsible to the CLIENT for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.

10. PROFESSIONAL LIABILITY - The CLIENT agrees to limit liability and require a like limitation from any construction contractor or subcontractor who performs work for which HOYLE, TANNER has provided reports, plans, and specifications, in an amount of \$50,000 or HOYLE, TANNER's fee, whichever is smaller.

11. SUSPENSION OF SERVICES - This agreement may be terminated upon ten (10) days written notice by either party should the other fail to perform his obligations hereunder. The CLIENT shall remain fully liable for and shall promptly pay HOYLE, TANNER the full amount for all services rendered by HOYLE, TANNER to the date of suspension of services plus suspension charges. Suspension charges shall include the cost of putting documents and analyses in order, personnel and equipment rescheduling or reassignment adjustments, and all other related costs and charges directly attributable to suspension.

If payment of invoices by the CLIENT is not maintained on a thirty (30) day current basis, HOYLE, TANNER may, by providing a ten (10) day written notice to the CLIENT, suspend further services until payments

are restored to a current basis. In the event HOYLE, TANNER engages counsel to enforce overdue payments, the CLIENT shall reimburse HOYLE, TANNER for all reasonable attorney's fees and court costs related to enforcement of overdue payments. The CLIENT shall indemnify and save harmless HOYLE, TANNER from any claim or liability resulting from suspension of services due to non-current payments.

12. INDEMNIFICATION - The CLIENT shall defend, indemnify and hold harmless HOYLE, TANNER and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorneys fees) and consequential damages arising out of or resulting from the performance of the services, provided that any such claims, damages, losses or expenses are caused in whole or in part by the negligent act or omission and/or strict liability of the CLIENT, anyone directly or indirectly employed by the CLIENT (except HOYLE, TANNER) or anyone for whose acts any of them may be liable.

13. OUTSIDE CONSULTANTS - On occasion, HOYLE, TANNER engages the specialized services of individual consultants or other companies to participate in a project. When considered necessary, these firms or other consultants will be used. The cost of other consultants will be billed at cost plus a 10% administration charge.

14. LITIGATION - It is understood that unless expressly implied, the services outlined in this Agreement does not include the cost of professional services provided for any legal action or suit. Fees for court preparation, depositions, pretrial conferences and in court non-testimony time will be billed at two (2) times the normal billing rate. Fees for in-court testimony will be billed at three (3) times the normal billing rate.

15. APPLICABLE LAW - Unless otherwise specified, this agreement shall be governed by the laws of the principal place of business of HOYLE, TANNER.

16. OPINION OF PROBABLE CONSTRUCTION COSTS - HOYLE, TANNER's opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. HOYLE, TANNER cannot guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the Project may affect estimates.

17. VALIDITY - Should any one or more of the terms and conditions stated herein be deemed unenforceable or invalid, either in whole or in part, by judgment or court order, that shall not effect the remaining terms and conditions or parts thereof and they shall remain in full force and effect.

18. SCHEDULE - If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of HOYLE, TANNER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If CLIENT has requested changes in the scope, extent, or character of the Project, the time of performance of HOYLE, TANNER's services shall be adjusted equitably.

HOYLE, TANNER cannot be held responsible for delays in rendering services caused by issues beyond HOYLE, TANNER's control.